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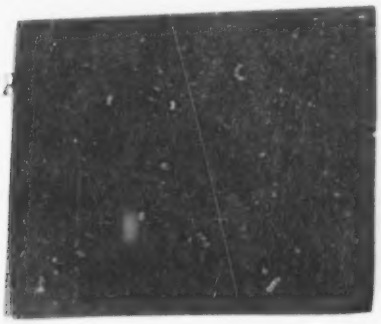
# THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[5 August 1997]



1. The International Federation of Human Rights Leagues (FIDH) and its partner organization in Kenya, the Kenya Human Rights Commission (KHRC), are concerned about the situation of human rights in Kenya.

2. In 1996, the Kenya Human Rights Commission counted a total of at least 2,597 cases of abuse of these diverse rights. This makes an average of at least 216 abuses of human rights a month, or 7 a day. A more specific example is extrajudicial killings by the police in Kenya. In 1994 there were at least 45 such killings, rising to 120 in 1995 and 130 in 1996. Hence, the trend is that the police kill at least 11 Kenyans a month. In Kenya's prisons, a conservative estimate is that there are at least 3 deaths daily. Clearly, the right to life as recognized by articles 3 and 6 of the Universal Declaration of Human Rights (UDHR) and the International Covenant for Civil and Political Rights (ICCPR), to which Kenya is a party, is not operative.

Violations of civil and political rights

3. In 1996, there were at least 140 reported cases of police brutality, 1,997 cases of arbitrary arrests by the police, 45 cases of the infringement of the freedom of speech, 50 cases of the abuse of the freedom of assembly, 60 cases of the violation of academic freedom (such as closures of educational institutions and suspensions or expulsions of students who agitate for the greater respect of the freedoms of expression and association in such institutions), 26 cases of the abrogation of the freedom of movement and 27 cases of government interference with opposition political activity.

4. The abrogation of these rights is facilitated by a host of repressive laws based on a constitution that vests too much power in the presidency. Moreover, these immense powers of the President have enabled those in his favour to enjoy impunity.

5. Under the Constitution, the President controls the executive, Parliament and the courts. He can arbitrarily hire and fire civil servants (section 23 of the Constitution) and appoint all members of the Electoral Commission which is supposed to supervise and organize elections in Kenya. He can adjourn or dissolve Parliament at will (section 59 of the Constitution) and he appoints the Chief Justice and judges of the High Court and Court of Appeal at will. Moreover, members of subordinate courts in Kenya are legally hired, disciplined, promoted and fired by the Judicial Service Commission whose members are all appointed and controlled by the President.

6. The other laws that infringe on the enjoyment of human rights in Kenya include:

(a) **The Preservation of Public Security Act, chapter 57 of the laws of Kenya.** Under this law, the President can arbitrarily detain any individual without trial at any time. This law infringes on the right to personal liberty as recognized by articles 2 of the UDHR and 9 of the ICCPR;

(b) **The Public Order Act, chapter 56 of the laws of Kenya.** Under this law, public meetings have to be licensed by the Government. They can also be disrupted by the police who, as civil servants, owe allegiance to the

President. This has resulted in the frequent and arbitrary non-licensing and disruption of public meetings in Kenya. This law abridges the right to the freedom of peaceful assembly and association as recognized by articles 20 of the UDHR and 22 of the ICCPR;

(c) **The Law of Sedition, sections 56 and 57 of the Penal Code, chapter 63 of the laws of Kenya.** This law outlaws all criticism of the Government of Kenya. It abrogates the right to the freedom of expression and to hold opinions without interference as provided for under article 19 of both the UDHR and ICCPR;

(d) **The Societies Act, chapter 108 of the laws of Kenya.** Under this law, a society or political party can be arbitrarily denied registration or proscribed by the Government. This denies Kenyans their right to association as enshrined in articles 20 of the UDHR and 21 of the ICCPR. 1997 is an election year in Kenya and there are a number of political parties that remain unregistered, meaning that their supporters are being denied their right to take part in the Government of their country as provided for by articles 21 and 25 of the UDHR and ICCPR respectively;

(e) **The NGO Coordination Act.** Non-governmental organizations can be vetted and proscribed by the Government. This infringes on Kenyans' rights to free speech and expression, association and work as recognized by articles 19, 20 and 23 of the UDHR, articles 19 and 22 of the ICCPR and article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);

(f) **Trade Unions Act.** The Government can arbitrarily refuse to register a trade union. This denies workers in Kenya their right to free association and to freely form trade unions as recognized by articles 20 of the UDHR, 8 of the ICESCR and 22 of the ICCPR;

(g) **The law of prohibited publications, section 52 of the laws of Kenya.** This law allows the Minister of State to arbitrarily ban publications. It abridges Kenyans' right to freedom of expression as recognized by article 19 of both the UDHR and the ICCPR;

(h) **The Kenya Posts and Telecommunications Corporation Act, chapter 411 of the laws of Kenya**. Under this law, no one is allowed to broadcast on the airwaves without the permission of the Government thus infringing on the freedom of expression as recognized by article 19 of both the UDHR and the ICCPR;

(i) **The Kenya Broadcasting Corporation (Nationalising) Act, chapter 221 of the laws of Kenya.** This law exclusively vests the Kenya Broadcasting Corporation, the only nationwide radio and television service, in the Government of Kenya. This infringes on the freedom of expression.

Violations of social and economic rights

7. Although Kenya has been a party to the International Covenant on Economic, Social and Cultural Rights since 3 January 1976, it has never submitted a single report on its fulfilment of its obligations under the Covenant as required.

8. Economic, social and cultural rights in Kenya are widely abused. In 1996, there were at least 97 cases of child abuse, 51 cases of violence against women, 37 cases of abuse of workers' rights and 43 cases of harassment of the poor. 1997 has not been any better. The Government has consistently refused to allow civic education seminars in Kenya as required by article 13 of the Covenant. There have also been cases of harassment of hawkers.

9. Corruption continues unabated in Kenya, with Transparency International, an international anti-corruption watchdog, rating Kenya the third most corrupt nation in the world. The "grabbing" of public land in Kenya is an everyday occurrence, as is the misappropriation of public funds by government officials. The Government's response to this is a public relations exercise. Worse, efforts from civil society to address the problem of corruption in Kenya have been scuttled by the Government. For example, the Government refused in 1991 to register an organization to monitor and highlight cases of corruption. In 1995, it temporarily deregistered CLARION, a local NGO that had just published a book on corruption in Kenya.

10. Education in Kenya is inaccessible to the poor at all levels with parents having to shoulder the burden of buying stationery and textbooks and the construction of school buildings. Moreover, the Government in July 1997 published a bill in parliament which, if enacted, would require students in Kenya's public universities to pay fees or face expulsion. This is contrary to articles 26 and 13 of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, respectively, which require education to be available on the basis of merit.

11. Human Rights Watch, in the book Juvenile Injustice: Police Abuse and Detention of Street Children in Kenya published in June 1997, estimated the population of Kenya's street children to be above 40,000. This situation negates the right of these children to social security as provided for under article 22 of the UDHR and their right to an adequate standard of living as recognized under article 11 of the ICESCR.

Recommendations

12. The Kenyan authorities should undertake immediate constitutional and other legal reforms to establish the necessary foundation for the respect of human rights in Kenya.

13. The Kenyan Government should ensure immediate respect for human rights in Kenya and an immediate stop to impunity, police brutality and killings in Kenya.

14. The Kenyan Government should ratify those international human rights instruments — such as the Optional Protocol and the Second Optional Protocol to the International Covenant on Civil and Political Rights — that it has not yet ratified.

15. The Kenyan Government should respect and obey the provisions of the international human rights instruments it has signed or ratified and ensure that these are incorporated into Kenya's domestic law so that these instruments are honoured.

16. International bodies should keep a strict monitoring regime over Kenya's human rights performance and exert as much pressure as possible whenever abuses occur.

17. The Sub-Commission should condemn the violations of human rights in Kenya.

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